

Comment Letter O052

O052

CENTER FOR LAW IN THE PUBLIC INTEREST
3250 Ocean Park Boulevard, Suite 300
Santa Monica, California 90405-3219
Telephone: (310) 314-1947 Facsimile: (310) 314-1957
www.clipi.org

VIA FAX AND FED EX

August 31, 2004

Chairman Joseph E. Petrillo and
Members of the High Speed Rail Authority
Mehdi Morshed, Executive Director
925 L Street, Suite 1425
Sacramento, CA 95814

Allan Rutter, Administrator
Federal Railroad Administration
U.S. Department of Transportation
1120 Vermont Avenue, N.W. M/S 20
Washington, D.C. 20590

Re: *Comments on the Draft Program EIR/EIS for the California High Speed Train and the Impact on the State Parks in the Cornfield and Taylor Yard*

Dear Chairman Petrillo, Mr. Mehdi, Mr. Rutter, and Members of the High Speed Rail Authority:

The Center for Law in the Public Interest submits the attached comments on behalf of a diverse alliance of social justice, environmental, and community organizations that includes (partial list) the Anahuak Youth Soccer Association, City Parks Alliance, Concerned Citizens of South Central Los Angeles, Friends of the Los Angeles River, Glassell Park Improvement Association, Los Angeles Metropolitan Churches, National Association for Olmsted Parks, and Planning and Conservation League regarding the California High Speed Train Draft Program Environmental Impact Report and Environmental Impact Statement.

Very truly yours,



Robert Garcia
Executive Director

Enclosure

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Dear Chairman Petrillo, Mr. Mehdi, Mr. Rutter, and Members of the High Speed Rail Authority:

I. Overview

The Center for Law in the Public Interest submits these comments on behalf of (partial list) the Anahuak Youth Soccer Association, City Parks Alliance, Concerned Citizens of South Central Los Angeles, Friends of the Los Angeles River, Glassell Park Improvement Association, Los Angeles Metropolitan Churches, National Association for Olmsted Parks, and Planning and Conservation League regarding the California High Speed Train Draft Program Environmental Impact Report and Environmental Impact Statement ("DEIS/R").

We focus specifically in these comments on the potential impact of the proposed high speed train ("HST") on the new State Parks in the Cornfield and Taylor Yard along the Los Angeles River and the surrounding communities. However, our concerns extend to potential impacts on each of the state parks identified below, and on the environmental justice analysis generally.

Many public leaders see the revitalization of the Los Angeles River corridor as a key to the economic and environmental enhancement of Los Angeles, and a thread that could provide Los Angeles with a greater sense of community. Central to the River's revitalization is the Cornfield, a site from which the history of Los Angeles flows, and Taylor Yard, which stretches for two miles along the River's banks.

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Taylor Yard is adjacent to one of last remaining remnants of soft-bottomed, riparian channels in the predominately concrete Los Angeles River. Over 300 species of birds find this section of river an essential stopover along the Pacific Flyway. Migrating birds stop for food and rest, and some birds are found year-round, nesting and breeding. About half of the total recorded birds in Los Angeles County have even been spotted along the soft-bottomed portions of the river.¹

A high speed train will undoubtedly have adverse impacts on the Cornfield and Taylor Yard. The DEIS/R does not analyze what those impacts are. It must.

The California Department of Parks and Recreation recognizes that the HST will have adverse environmental justice impacts on the Cornfield and Taylor Yard and surrounding communities:

Proposed alternative HST corridors impacting both the Taylor Yard and Cornfield properties clearly raise the environmental justice issue.

The children of the Cornfield/Taylor Yard community are disproportionately low income children of color. The community within a five mile radius of the Cornfield is 68% Latino, 14% Asian, 11% non-Hispanic white, and 4% African-American with thirty percent of the population below poverty level as compared to 14% for the State of California as a whole. Within five miles of the Cornfield there are 282,967 children and 235,000 children within five miles of Taylor Yard.

Yet, to serve this population, Los Angeles has fewer acres of parks per thousand residents than any major city in the United States, having less than one acre of park per thousand residents. The National Recreation and Park Association standard is ten acres per thousand population. Compare this standard to the 0.9 acres per thousand in the community surrounding Cornfield and the 0.3 acres of parks per thousand residents surrounding Taylor Yard (one of the least park-served areas in Los Angeles) with the 1.7 acres in disproportionately white and relatively wealthy parts of Los Angeles.

The California Department of Parks and Recreation recognizes that the Greater Los Angeles Region is an area that is under-served in regard to park facilities and that many of the area's residents, particularly those least able to afford it, are either unaware of, or feel isolated from, state and federal parklands and recreational facilities. This Department on behalf of the people of the State of California has invested \$78,000,000 in the purchase of the Taylor Yard/Cornfield properties in this decade specifically to address these disparities. **This effort will be undone unless alternative routing or a fully subterranean system is chosen to bypass all impacts to these properties.**

Comments submitted by Ruth Coleman, Director, California Department of Parks and Recreation, August 19, 2004 (emphasis added).

The DEIS/R fails to provide the public with a clear and full disclosure of the impacts of high speed rail

¹ Comments submitted by Ruth Coleman, Director, California Department of Parks and Recreation, August 19, 2004 ("State Parks Comments").

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on environmental quality, environmental justice, active recreation, and human health. A revised DEIS/R should be drafted and re-circulated to the public. The authorities must meaningfully address the environmental and social justice concerns and the impacts on state parks including the Cornfield and Taylor Yard.

We present our vision for urban parks and open space in Part II below. Part III summarizes relevant legal standards. Part IV presents specific comments concerning the Cornfield and Taylor Yard.

We incorporate by reference the comments submitted by the Planning and Conservation League.

II. Our Vision and the Values at Stake

A. Our Vision

We are guided by a collective vision for a comprehensive and coherent web of parks, beaches, forests, and other open space, schools with playing fields and playgrounds, and transit that serves the diverse needs of diverse users and reflects the cultural urban landscape. Los Angeles is park poor, and there are unfair disparities in access to parks and other open space benefits based on race, ethnicity, income, access to a car, and other factors.

Our vision is inspired in part by the classic 1930 report *Parks, Playgrounds, and Beaches for the Los Angeles Region* by Olmsted Brothers and Bartholomew & Associates. The Olmsted Plan envisioned a comprehensive and coherent regional system of open space and transportation to promote the social, economic and environmental vitality of Los Angeles and the health of its people. According to the Olmsted Report in words that remain true today:

Continued prosperity [in the Los Angeles region] will depend on providing needed parks, because, with the growth of a great metropolis here, the absence of parks will make living conditions less and less attractive, less and less wholesome. . . . In so far, therefore, as the people fail to show the understanding, courage, and organizing ability necessary at this crisis, the growth of the Region will tend to strangle itself.²

Implementing the Olmsted vision would have made Los Angeles one of the most beautiful and livable regions in the world. California's state park system, which was designed by Frederick Law Olmsted, Jr. and served as a model for other states,³ is in jeopardy under the proposed DEIS/R. Powerful private interests and civic leaders demonstrated a tragic lack of vision and judgment when they killed the Olmsted Report in Los Angeles. Developing a HST without adequately addressing the impact on state parks like the Cornfield and Taylor Yard would demonstrate a similar lack of vision and judgment.

One of the broadest and most diverse alliances ever behind any issue in Los Angeles is working to restore a part of the Olmsted vision and the lost beauty of Los Angeles. We stopped warehouses to create the State Park in the 32-acre Cornfield. The *Los Angeles Times* called the Cornfield "a heroic

² Olmsted Brothers and Bartholomew & Associates, *Parks, Playgrounds, and Beaches for the Los Angeles Region 1* (1930), reprinted in Greg Hise & William Deverell, *Eden by Design* 83 (2000).

³ Charles A. Birnbaum, FASLA and Robin Karson, *Pioneers of American Landscape Design* at 275 (2000).

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monument" and "a symbol of hope." We stopped a commercial project to create a 40 acre park as part of a planned 103-acre park in Taylor Yard along the 51 mile Los Angeles River Parkway. We understand that the Los Angeles Unified School District ("LAUSD") has purchased a parcel of land in Taylor Yard to build a new high school.

B. The Values at Stake

According to a recent survey on Californians and the environment by the influential California Public Policy Institute, 64% of Californians say that poorer communities have less than their fair share of well-maintained parks and recreational facilities. Latinos are far more likely than non-Hispanic whites (72% to 60%) to say that poorer communities do not receive their fair share of these environmental benefits. A majority of residents (58%) agree that compared to wealthier neighborhoods, lower-income and minority neighborhoods bear more than their fair share of the environmental burdens of toxic waste and polluting facilities.⁴

Communities of color and low income communities have been among the biggest supporters of bonds for open space, clean air, and clean water in the past several years. California's recent Proposition 40, for example – the largest resource bond in United States history, with \$2.6 billion for parks, clean water and clean air – passed in March 2002 with the support of 77% of black, 74% of Latino voters, 60% of Asian, and 56% of non-Hispanic white voters. Seventy-five percent of voters with an annual family income below \$20,000 and 61% with a high school diploma or less supported Prop 40 – the highest among any income or education levels.⁵

Prop 40 demolished the myth that the environment is a luxury that communities of color and low income communities cannot afford or are not willing to pay for.

The struggles for the parks in the Cornfield and Taylor Yard demonstrate that low income communities and communities of color who never participated in government before are fighting city hall and wealthy developers – and winning.

In an effort to maximize limited open space resources and achieve environmental and social justice in Los Angeles, we are working to unite the rich cultural, historical, recreational, and environmental resources in the heart of Los Angeles through a Heritage Parkscape—like the Freedom Trail in Boston—that will link the Cornfield, Taylor Yard, the Los Angeles River, the Zanja Madre or "mother trench" that provided water for early L.A., El Pueblo Historic Park and Olvera Street, old and new Chinatown, Little Tokyo, Elysian Park, Chavez Ravine, Confluence Park, the Arroyo Seco parkway, Debs Park, Ascot Hills, and Biddy Mason Park, along with 100 other sites. Public art projects including murals, photo exhibits and installations on the ground and on the web, school art projects, oral histories, and theater will be part of this living legacy. The Heritage Parkscape will serve as a "family album" to commemorate the struggles, hopes and triumphs of the settlers and later immigrants who entered Los Angeles through this area.

⁴ Mark Baldasare, Public Policy Institute of California Statewide Survey: Special Survey on Californians and the Environment at vi (June 2002).

⁵ L.A. Times state-wide exit poll, March 7, 2002.

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The Heritage Parkscape will serve as a "family album" to commemorate the struggles, hopes and triumphs of the settlers and later immigrants who entered Los Angeles through this area. The Heritage Parkscape illustrates the power of place: "the power of ordinary urban landscapes to nurture citizens' public memory, to encompass shared time in the form of shared territory And even bitter experiences and fights communities have lost need to be remembered -- so as not to diminish their importance." The Heritage Parkscape revives the forgotten history of Los Angeles. The footprint of the Heritage Parkscape coincides closely with the Olmsted vision for downtown.

The beauty of the earth, the glory of the sky, the serenity of the river, the joy of the people, and the future of our children are bringing people together to create the kind of community where they want to live and raise children. Parks are not a luxury. People in parks play, walk, talk, kiss, sit, jog, bike, learn, bird, protest, pray, or work. Parks are a democratic commons that provide a different rhythm for everyday life and bring people together as equals. Parks cool the city and clean the air and ground. Sports improve human health and academic performance; increase access to higher education; inspire players and fans; provide lessons in teamwork, leadership, and self-esteem; and provide an alternative to gangs, crimes, drugs, violence, and teen sex. Nearly 40% of California children are not physically fit and more than 25% are overweight, facing diseases including diabetes, blindness and amputations. Parks provide opportunities for recreation and physical activity. Sports are among the most valued cultural resources in many communities. New Latino immigrants do not organize politically, they first organize soccer leagues. Sports help desegregate society. Jackie Robinson broke baseball's color barrier seven years before *Brown v. Board of Education* declared "separate but equal" unconstitutional. Parks promote economic vitality and create quality jobs in surrounding communities. Social justice and stewardship of the earth have motivated spiritual leaders including Nobel Peace Prize Laureate Rigoberta Menchú, Cardinal Roger Mahony, and the Justice and Peace Commission of the Catholic Archdiocese of Los Angeles to actively support the creation of state parks in the Cornfield and Taylor Yard.⁶

III. The Legal Standards

The DEIS/R is invalid under federal and state environmental, environmental justice, and civil rights laws.

Then-Secretary Andrew Cuomo of the United States Department of Housing and Urban Development recognized that the principle of equal justice must be implemented in developing the Cornfield. Secretary Cuomo withheld federal funding for the warehouse proposal unless the City of Los Angeles and Majestic Realty conducted a "full-blown" assessment of the impact of the proposed development on communities of color and low-income communities, including the park alternative. Secretary

⁶ See generally Robert Garcia and Thomas A. Rubin, "Crossroad Blues: The MTA Consent Decree and Just Transportation," chapter in Karen Lucas, ed., *Running on Empty: Transport, Social Exclusion, and Environmental Justice* (2004); Robert Garcia et al., "Community, Democracy and the Urban Park Movement," chapter in Dr. Robert Bullard's forthcoming book on Environmental Justice to be published by the Sierra Club; Robert Garcia et al., *The Cornfield and the Flow of History: People, Place, and Culture*, Center for Law in the Public Interest (2004) (available at www.clipi.org); Robert Garcia et al., *Dreams of Fields: Soccer, Community, and Equal Justice*, Center for Law in the Public Interest (2002) (available at www.clipi.org); Robert Garcia, *Equal Access to California's Beaches* (2002), published in the Proceedings of the Second National People of Color Environmental Leadership Summit - Summit II (www.ejrc.cau.edu/summit2/Beach.pdf).

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Cuomo acted after members of the Chinatown Yard Alliance filed an administrative complaint claiming the warehouse project was the result of discriminatory land use policies that had long deprived communities of color and low-income communities of parks under federal civil rights, environmental justice, and environmental laws.⁷ Then-State Senator Tom Hayden emphasized in a letter to Secretary Cuomo that public funds should not be used to perpetuate and worsen the longstanding practice in Los Angeles of unlawfully depriving inner city residents of equal access to parks and open space.⁸

A. Federal and State Environmental Laws

The DEIS/R does not comply with the California Environmental Quality Act ("CEQA")⁹; the CEQA Guidelines, California Code of Regulation, Title 14, Section 15000 *et seq.*; the National Environmental Policy Act ("NEPA")¹⁰, and the NEPA regulations. The DEIS/R must be revised and re-circulated.¹¹

1. National Environmental Policy Act

NEPA commits the federal government to "encourage productive and enjoyable harmony between man and his environment" and "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man."¹² To realize these goals, NEPA demands that the "policies, regulations, and public laws of the United States [be] interpreted and administered" in accordance with its principles, "to the fullest extent possible."¹³ This strong mandate was intended to guide agencies in preparing an EIS, which is required of all projects that "may significantly degrade some human environmental factor."¹⁴ As the Supreme Court has explained:

NEPA's instruction that all federal agencies comply with the impact statement requirement—and with all the other requirements of § 102—"to the fullest extent possible," 42 U.S.C. § 4332, is neither accidental nor hyperbolic. Rather the phrase is a deliberate command that the duty NEPA imposes upon the agencies to consider environmental factors not be shunted aside in the bureaucratic shuffle.¹⁵

The fundamental purpose of an EIS is to force the decision maker to take a "hard look" at the environmental consequences of her proposal, before a decision to proceed is made.¹⁶ The EIS must be

⁷ Letter from Office of the Secretary, United States Department of Housing and Urban Development, to Los Angeles Deputy Mayor Rocky Delgadillo Re: City of Los Angeles – Section 108 Application – Cornfields B-99-MC-06-0523, Sep. 25, 2000.

⁸ Letter from State Senator Tom Hayden to HUD Secretary Andrew Cuomo, July 18, 2000.

⁹ Cal. Pub. Res. Code § 21000 *et seq.*

¹⁰ 42 U.S.C. § 4321 *et seq.*

¹¹ The DEIS/R's failure adequately to meet these disclosure requirements makes it virtually impossible to make an informed comparison between the various proposed alternatives. Our comments therefore will not attempt such a comparison. Rather, these comments will address the adequacy of the discussion of potential impacts, and the specificity and enforceability of the mitigation and benefits proposed to offset these impacts.

¹² 42 U.S.C. § 4321.

¹³ 42 U.S.C. § 4332.

¹⁴ *Steamboat v. F.E.R.C.*, 759 F.2d 1382, 1392 (9th Cir. 1985) (emphasis in original).

¹⁵ *Flint Ridge Development Co. v. Scenic Rivers Ass'n*, 426 U.S. 776, 787 (1976).

¹⁶ See 40 C.F.R. § 1502.1; *Baltimore Gas & Electric v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983).

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an objective, neutral document, not a work of advocacy to justify a predetermined result.¹⁷ To help achieve this goal, NEPA sets forth a list of factors that the responsible official must consider "to the fullest extent possible" and include in a "detailed statement"¹⁸

- (i) the environmental impact of the proposed action;
- (ii) any adverse environmental effects which cannot be avoided should the project be implemented;
- (iii) alternatives to the proposed action;
- (iv) and the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

The duty to consider "alternatives to the proposed action"—to "rigorously explore and objectively evaluate all reasonable alternatives"—lies, in the words of the regulators, at "the heart" of the entire assessment process.¹⁹ Agencies must "devote substantial treatment to each alternative" and provide support for their decisions to accept or reject them.²⁰

In addition, an EIS must be sufficiently intelligible to allow the public to effectively comment upon it.²¹ Thus, "an EIS must be organized and written so as to be readily understandable by the governmental decision makers and by interested non-professional laypersons likely to be affected by actions taken under the EIS."²²

Federal agencies shall to the fullest extent possible "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment."²³ In addition, federal agencies shall "[u]se all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment."²⁴ "Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.²⁵ Economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.²⁶

¹⁷ 40 C.F.R. § 1502.2(g).

¹⁸ 42 U.S.C. § 4332(2)(C).

¹⁹ 40 C.F.R. § 1502.14.

²⁰ 40 C.F.R. § 1502.14(b); *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 93 n.12 (2nd Cir. 1975).

²¹ 40 C.F.R. § 1502.8.

²² *Oregon Environmental Council v. Kunzman*, 817 F.3d 484, 494 (9th Cir. 1987).

²³ 40 C.F.R. § 1500.2(e).

²⁴ 40 C.F.R. § 1500.2(f).

²⁵ See 40 C.F.R. § 1508.8.

²⁶ 40 C.F.R. § 1508.14.

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Environmental effects are interpreted broadly to include economic, social and other environmental justice considerations. The "effects" to be analyzed include "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative."²⁷ NEPA analysis shall include discussions of the direct environmental effects and their significance, the indirect effects and their significance, the environmental effects of alternatives including the proposed action, and urban quality, historic and cultural resources, and the design of the built environment.²⁸ The Council on Environmental Quality created the following guiding principles for environmental justice analyses under NEPA:²⁹

- (i) consideration of the racial composition of the area affected by the proposed action, and whether there may be a disproportionate impact on minority populations;
- (ii) consideration of relevant public health and industry data and the potential for exposure to environmental hazards;
- (iii) consideration of "the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action";
- (iv) development of "effective public participation strategies";
- (v) assurance of "meaningful community representation in the process"; and
- (vi) assurance of tribal representation in the process in a manner that is consistent with the government-to-government relationship between the United States and tribal governments, the federal government's trust responsibility to federally-recognized tribes, and any treaty rights.

2. California Environmental Quality Act

CEQA and NEPA contain parallel requirements mandating that an environmental review accompany proposals for major federal and state actions significantly affecting the environment. The DEIS/R is to serve as "an environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."³⁰

The DEIS/R does not fulfill the basic requirements of CEQA and NEPA as it fails to provide enough information to adequately inform decision-makers and the public of the range of impacts resulting from the project. Simply put, the analysis in the DEIS/R is insufficient to fulfill the purposes for which it was drafted – to adopt the HST Alternative and select preferred HST corridors/alignments and general station locations.³¹ The High Speed Rail Authority ("Authority") and the Federal Rail Administration ("FRA") have not "demonstrate[d] to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action."³²

²⁷ 40 C.F.R. §1508.8.

²⁸ 40 C.F.R. §1502.16.

²⁹ Council on Environmental Quality, Environmental Justice: Guidance Under the National Environmental Policy Act 15-16 (1997), available at <http://ceq.eh.doe.gov/nepa/regs/ej/justice.pdf> [hereinafter CEQ Guidance].

³⁰ *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795, 810.

³¹ See DEIS/R at S-1.

³² *Berkeley Keep Jets Over Bay v. Port Commissioners* (2001) 91 Cal. App. 4th 1344, 1374 (quoting *Schoen v. Dept. of*

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3. Federal Section 4(f) and 6(f) Resources

The State Parks Comments document the potential impacts of high speed train on state parks throughout the state, and we incorporate those comments by reference here.

The parks that may be impacted by the project include, among others: Cardiff State Beach, Carlsbad State Beach, Castaic State Recreation Area, Colonel Allensworth State Historic Park, Cornfields State Park, Doheny State Beach, Fort Tejon State Historic Park, Henry W. Coe State Park, Hungry Valley State Vehicular Recreation Area, Leucada State Park, McConnell State Recreation Area, Moonlight State Beach, Old Town San Diego State Recreation Area, Pacheco State Park, San Clemente State Beach, San Elijo State Beach, San Luis Reservoir State Recreation Area, San Onofre State Beach, South Carlsbad State Beach, Torrey Pines State Beach, Torrey Pines State Reserve, and Taylor Yards State Park. However, the DEIS/R does not provide a comprehensive list of the impacted parks and as such fails to fully inform the public of the impacts the HST will have on national, state, and local parks throughout California.³³

Yet, "[d]epending on the system of alignment options selected, the HST Alternative could result in impacts on 58 to 93 parkland resources."³⁴ In fact, the HST Alternative will "directly intersect with a portion or ... require the use of the property from that resource in total" of approximately 54-89 Section 4(f) resources.³⁵

The extraordinary impact the HST Alternative would have on parks is directly at odds with Section 4(f) of Department of Transportation Act of 1966,³⁶ which states: "It is the policy of the United States Government that special effort be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites."³⁷ Federal law provides that a "publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance" may only be used for a transportation program or project if, "(1) there is no prudent and feasible alternative to using that land; and (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use."³⁸ The DEIS/R fails to meet the requirements of Section 4(f). These issues are crucial to the process and should be addressed in the DEIS/R, not merely save for future analyses.

These effort fail to reflect the "special effort" or assessment of "prudent and feasible alternatives" that Section 4(f) requires. That language of Section 4(f) is a "specific and explicit bar ... only the most

Forestry (1997) 58 Cal. App. 4th 556, 573-574)

³³ The DEIS/R does not make clear precisely what the project's impacts would be, what mitigation is possible, and, most importantly, what alternatives exist to avoid altogether the taking of land from either of these parks. This problem is indicative of the draft's failure to appropriately consider the extent of many of the adverse impacts associated with the project – impacts that can and must be avoided.

³⁴ DEIS/R at 3/17-10

³⁵ DEIS/R at 3/16-6 (Table 3/16-2)

³⁶ 49 U.S.C. § 303

³⁷ 49 U.S.C. § 303(a); DEIS/R at 3.16-1

³⁸ 49 U.S.C. § 3030(c)(1)-(2); DEIS/R at 3.16-1

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unusual situations are exempted.”³⁹ Section 4(f) makes clear that preservation of parkland is of paramount importance, more so than costs, directness of route, and community disruption.⁴⁰ The review that Section 4(f) requires must be conducted before an alignment that would impact Section 4(f) resources is chosen, and the DEIS/R must be revised and re-circulated to reflect this change.⁴¹ By failing to address these impacts in the DEIS/R the Authority and the FRA have undermined informed decision-making and meaningful public comment.

Complementing Section 4(f), “Section 6(f) of the act prohibits the conversion to a non-recreational purpose of property acquired or developed with” grants obtained through the Land and Water Conservation Fund Act “without the approval of the U.S. Department of the Interior’s (“DOI’s”) National Park Service. Section 6(f) directs DOI to ensure that replacement lands of equal value (monetary), location, and usefulness are provided as conditions to such conversions. Consequently, where such conversions of Section 6(f) lands are proposed for transportation projects, replacement lands must be provided.”⁴² The DEIS/R does little to address this requirement.

Given the extent of potential impacts, the analysis contains in the draft clearly fails to meet legal standards. Section 4(f) states: “The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the states, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.”⁴³

Section 4(f) requires analysis of alternatives be conducted, and specific mitigation measures identified, before an alignment choice is made. This process must occur before the project is approved so that the public can meaningfully comment before these parks are slated for degradation or destruction.

B. Federal and State Civil Rights and Environmental Justice Laws

1. Federal Title VI and its Regulations

Title VI of the Civil Rights of 1964 and its implementing regulations prohibit both intentional discrimination based on race, color or national origin, and unjustified discriminatory impacts for which there are less discriminatory alternatives, by applicants for or recipients of federal funds including recipients of funds from the Department of Transportation. Title VI provides: “No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁴⁴

The regulations that every federal agency has enacted pursuant to Title VI bar criteria or methods of

³⁹ *Citizens to Preserve Overton Park v. Volpe* (1971) 401 U.S. 402, 411.

⁴⁰ *Citizens to Preserve Overton Park v. Volpe* (1971) 401 U.S. 402, 412-13.

⁴¹ Compare *Brooks v. Volpe* (W.D. Wash. 1971) 350 F. Supp. 269, 282, *aff’d* (9th Cir. 1973) 487 F.2d 1344 (Section 4(f) determination that relies on a deficient EIS is invalid).

⁴² DEIS/R at 3.16-1.2 (citing 16 U.S.C. §§ 460-4-460-11); see DEIS/R at 3.16-1.2 (citing California Park Preservation Act of 1971, California Public Resources Code § 5400 *et seq.*) (similar).

⁴³ 49 U.S.C. § 303(b); DEIR at 3.16-1.

⁴⁴ 42 U.S.C. § 2000d (2004). The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution also prohibits intentional discrimination. See also Section 1983 of the Civil Rights Act of 1871.

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administration by recipients of federal funds that have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program with respect to individuals of a particular race, color, or national origin. An important purpose of the statutory schemes is to assure that recipients of public funds not maintain policies or practices that result in racial discrimination.

2. The President's Order on Environmental Justice

The President's Order on Environmental Justice requires that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”⁴⁵ “Each Federal agency shall conduct its programs, policies, and activities that substantially effect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.”⁴⁶ Each agency must gather, analyze, and publish information about the impact of its actions on diverse populations.⁴⁷ California Civil Rights and Environmental Justice Laws

California law also prohibits intentional discrimination and unjustified discriminatory impacts under Government Code section 11135.⁴⁸

In addition, California law defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”⁴⁹

3. Discriminatory Actions

Proceeding with the HST under the current DEIS/R would violate both the disparate impact and intentional discrimination standards under federal and state laws.

a. Unjustified Discriminatory Impacts.

There are three prongs to the discriminatory impact: (1) whether an agency action has a disproportionate impact based on race, ethnicity, or national origin; (2) if so, whether the action is justified by business necessity; and (3) even if the action would otherwise be justified, the action is prohibited if there are less discriminatory alternatives to accomplish the same objective.⁵⁰

⁴⁵ Executive Order 12,898 at § 1-101 (Feb. 11, 1994).

⁴⁶ *Id.* at § 2-2.

⁴⁷ *Id.* at § 3-3.

⁴⁸ See Cal Gov. Code § 11135 *et seq.*; 22 CCR § 9810.

⁴⁹ Cal. Gov. Code § 65040.12. The Governor's Office of Planning and Research is currently working on implementing this code section.

⁵⁰ *Larry P. v. Riles*, 793 F.2d 969, 983 (9th Cir. 1984).

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Applying the discriminatory impact standard here, (1) people of color and low income communities are disproportionately denied the benefits of parks and open space including the Cornfield and Taylor Yard, as demonstrated in the State Park Comments quoted above. (2) There is no business necessity to justify those disparities, and the DEIS/R present none. (3) There are less discriminatory alternatives, as discussed throughout our public comments.

b. Intentional Discrimination

To evaluate an intentional discrimination claim, courts consider the following kinds of evidence: (1) the impact of the action, whether it bears more heavily on one racial or ethnic group than another; (2) any history of discrimination; (3) any departures from procedural norms; (4) any departures from substantive norms; (5) the decision maker's knowledge of the harm caused and would continue to cause; (6) a pattern or practice of discrimination.⁵¹

Applying the intentional discrimination analysis here: (1) The impact analysis is the same as above. (2) and (6) There is a history and pattern of discrimination by transportation authorities, particularly rail authorities, against communities of color and low-income communities in the heart of Los Angeles and throughout California, as discussed below. (3) and (4) The DEIS/R are replete with procedural and substantive irregularities, as demonstrated throughout the comments submitted by State Parks, Planning and Conservation League, Natural Resources Defense Council, and others. (5) Decision-makers know the impact their actions would have on communities of color and low income communities. We document those impacts here.

"[Our] intent here is not to paint a simplistic scene of victims and aggressors, with single proximate factors of cause and effect, but to recognize that the complexities and ambiguities of this nation's multicultural past and present and the ways in which American 'society' has used our impacted Earth cannot be separated from underlying values that allow racism and inequities in political and economic power."⁵²

The fact that low-income people of color disproportionately live in areas without adequate access to parks and recreation is not an accident of unplanned growth, but rather the result of a continuing history and pattern of discriminatory transportation policies, discriminatory land use planning, restrictive housing covenants, federal mortgage subsidies restricted to racially homogenous neighborhoods, and discriminatory park funding policies and practices.⁵³

⁵¹ See *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); *United States Department of Justice, Civil Rights Division, Title VI Legal Manual* (Sept. 1998) at 49-53 and authorities cited.

⁵² Alison H. Deming and Laurent E. Savoy, *The Colors of Nature: Culture, Identity, and the Natural World* 10 (2002) (hereafter *Colors of Nature*).

⁵³ The Federal Housing Administration Manual of 1938, for example, states: "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values." See also Mike Davis, *City of Quartz* 160-64 (1990); Mike Davis, "How Eden Lost Its Garden," chapter in *Ecology of Fear* (2000).

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c. The Continuing History and Pattern of Discrimination by Transportation Authorities in the Cornfield and Taylor Yard Communities and Beyond

The continuing history and pattern of discrimination by transportation authorities against people of color in California, including the communities surrounding the Cornfield and Taylor Yard, has been extensively documented.

The Cornfield today lies across the street from New Chinatown and a stone's throw away from old Chinatown. Historically railroad authorities acting under color of law "discriminated against [the Chinese] in every way possible, and the state did all it could to degrade them and deny them a decent livelihood." Stephen E. Ambrose, *Nothing Like It in the World: The Men Who Built the Transcontinental Railroad 1863-1869* at 150 (2000). *Accord*, *id.* at 150-51, 153-54, 378; David Haward Bain, *Empire Express: Building the First Transcontinental Railroad 205-07* and authorities cited (2000); David Haward Bain, *The Old Iron Road* 200-02, 264-65, 356-57 (2004).

The locations of both Old and New Chinatown were determined by discriminatory policies and practices. By the end of the nineteenth century, the Chinese had been systematically squeezed into a small part of El Pueblo on the southwest side of the Plaza towards the Los Angeles River through discriminatory enforcement of health regulations, arson, violence, and the destruction of buildings as a result of racial discrimination and fears that Chinese would lower property values. In 1871, a mob that included police officers committed the random lynching murders of nineteen Chinese residents.⁵⁴ The Mayor of Los Angeles, a City Council member, the Chief of Police, and a railroad employee were implicated in the Chinatown Massacre that first brought Los Angeles to international attention. The Massacre started on Calle de los Negros—called "Nigger Alley" at the time—within walking distance of the Cornfield and the present Union Station.⁵⁵

In the 1920s and 1930s, the three railroads—Union Pacific, Southern Pacific, and the Atchison, Topeka & Santa Fe—planned to construct a terminal downtown. Old Chinatown was destroyed and residents were relocated to the present site of New Chinatown to make room for Union Station. The City Municipal Housing Commission did not even approve a plan to relocate Chinatown until weeks after the demolition started. New Chinatown was built on vacant Southern Pacific railroad land west of the Cornfield. Today Union Station is listed in the National Register of Historic Places for its architectural, historical, and archeological values. An interpretive panel on a walking tour outside Union Station makes no mention of the destruction of the community in Old Chinatown.⁵⁶

Today four freeways eviscerate the communities of color surrounding the Cornfield and nearby Taylor Yard. See Robert Garcia, *et al.*, *The Cornfield and the Flow of History: People, Place, and Culture* 5 (2004).⁵⁷

⁵⁴ See Robert S. Greenwood, *Down by the Station: Los Angeles Chinatown, 1880-1933* at 10-12, 37-40 (1996); James P. Allen and Eugene Turner, *Changing Faces, Changing Places: Mapping Southern Californians* 37 (2002); Brian Niiya, ed., *ENCYCLOPEDIA OF JAPANESE AMERICAN HISTORY* (2001) at 111-12.

⁵⁵ Paul M. De Falla, *Lantern in the Western Sky*, *HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA QUARTERLY* at 57 (1960).

⁵⁶ See generally Robert S. Greenwood, *Down by the Station: Los Angeles Chinatown, 1880-1933* at 10-12, 37-40 (1996).

⁵⁷ Available on the web at www.clipt.org.

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